July 13, 2018

VIA COURIER

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: MB Docket No. 17-318
Supplement to the Record: Expert Report of Harold Furchtgott-Roth

Dear Ms. Dortch:

ION Media Networks, Inc. ("ION"), Univision Communications Inc. ("Univision"), and Trinity Christian Center of Santa Ana, Inc. ("Trinity") (ION, Univision, and Trinity are herein collectively referred to as "Joint Commenters") hereby supplement their March 19, 2018 Joint Comments with the submission of the attached Expert Report of economist Dr. Harold Furchtgott-Roth (the "Expert Report"), addressing the Commission's review of the national TV ownership cap.

The Expert Report's analysis and conclusions support the positions that the Joint Commenters have expressed in this proceeding that dramatic changes in the media landscape have rendered the current 39% national ownership cap entirely outmoded and lead naturally to the question of whether the national ownership cap has outlived any usefulness it may have had, at least as applied to the station groups operated by the Joint Commenters.

Respectfully submitted,

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/s/

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

In the Matter of	)	
	)	
Amendment of Section 73.3555(e) of the	)	MB Docket No. 17-318
Commission's Rules, National Television	)	
Multiple Ownership Rule	)	

July 6, 2018

Expert Report of Harold W. Furchtgott-Roth

I. INTRODUCTION

My name is Harold W. Furchtgott-Roth. My business address is: 1200 New Hampshire Ave., N.W., Suite 300, Washington, DC 20036. I have been asked by ION Media Networks, Inc.to review a report prepared by BIA in this proceeding[1] and assess how this report may best be used by the FCC in this proceeding.

II. QUALIFICATIONS

I am president of Furchtgott-Roth Economic Enterprises, an economic consulting firm that I founded in 2003. I am also a Senior Fellow at the Hudson Institute where I founded the Center for the Economics of the Internet in 2011. In addition, I am an adjunct professor of law at Brooklyn Law School where I have taught communications law since 2014. I previously served on the Department of Commerce's Spectrum Management Advisory Committee.

I have consulted extensively in the media and broadcast industries. I have been retained as an expert witness in court proceedings and in arbitrations including both as an economic expert and as an expert in media industries.

I was a Commissioner of the Federal Communications Commission ("FCC") from November 1997 through the end of May 2001. In that capacity, I participated in all decisions of the Commission, including those affecting the broadcast and cable industries.

[1] Mark R. Fratrik, Ph.D., BIA Advisory Services, June 8, 2018, "Raising the National Television Ownership Reach Cap to 50%: An Economic Analysis." ("BIA Report")

From June 2001 through March 2003, I was a visiting fellow at the American Enterprise Institute for Public Policy Research ("AEI") in Washington, DC. While at AEI I wrote a book about my experience at the FCC implementing the Telecommunications Act of 1996.

From 1995 to 1997, I was chief economist of the House Committee on Commerce. One of my responsibilities was to serve as a principal staff member helping to draft the Telecommunications Act of 1996, which modified federal law affecting broadcasting and cable services, among other industries.

From 1988 to 1995, I served as a senior economist at Economists Incorporated, an economic consulting firm where I worked on econometric matters in regulatory, antitrust, and commercial litigation cases. These cases included many matters in the broadcast and cable industries.

My academic research concerns economics and regulation. I am the author or coauthor of four books: *A Tough Act to Follow?: The Telecommunications Act of 1996 and the Separation of Powers* (Washington, DC: American Enterprise Institute), 2006*; Cable TV: Regulation or Competition*, with R.W. Crandall, (Washington, DC: The Brookings Institution), 1996; *Economics of A Disaster: The Exxon Valdez Oil Spill*, with B.M. Owen, D.A. Argue, G.J. Hurdle, and G.R. Mosteller, (Westport, Connecticut: Quorum books), 1995; and *International Trade in Computer Software*, with S.E. Siwek, (Westport, Connecticut: Quorum Books), 1993. I have authored or coauthored dozens of other publications.

I received a Ph.D. in economics from Stanford University and an S.B. in economics from the Massachusetts Institute of Technology.

III. SUMMARY OF OPINIONS

Based on this information, on my experience in the media industries, on my professional experience including as an FCC commissioner, and on my training and experience as an economist, I reach the following opinions:

- There is much in the BIA Report that I agree with;
- As shown in the BIA Report, broadcast ownership groups have many competitors, primarily outside broadcasting;
- The history of the national television broadcast ownership cap indicates that the cap has been relaxed as the industry growth prospects have diminished;
- The national ownership caps are primarily focused on small companies that compete with much larger companies without a national ownership cap;
- The conclusions of the BIA Report related to economies of scale would more strongly support a cap higher than 50%, or no cap at all;
- A 50% national broadcast ownership cap without a UHF discount would be an unprecedented constriction of the national ownership cap at a time when broadcasters face more competition, and have a smaller viewership share, than ever; and
- The BIA Report would support a grandfathering provision.

There is much in the BIA Report that I agree with

There are many areas where I agree with the BIA Report. For example:

- Competing media such as digital media and cable are not constrained by national caps and can effectively reach 100% of U.S. market with higher market shares than ION or other broadcast ownership groups;[2]
- Eliminating the UHF discount without raising the national cap is a reflection of

[2] BIA Report, p. 1.

those “who do not adequately recognize the changing [market] landscape.”[3]

- “Local television companies need to achieve scale efficiencies in order to provide more competitive services for viewers and advertisers.”[4]
- “Without some relief from the current national ownership cap, local television stations will continue to be hamstrung economically when competing in the rapidly changing marketplace.”[5]
- “Obviously, a local station’s ability to serve the viewers in its market is premised on a healthy economic foundation.”[6]
- “In our judgment, allowing the local television industry a modest degree of flexibility to achieve economies of scale and scope both in local markets (duopoly relief) and in the national marketplace (national audience reach cap) is called for in 2018, given the current state of competition in the video marketplace.”[7]

As shown in the BIA Report, broadcast ownership groups have many competitors, primarily outside broadcasting

The BIA Report provides a good discussion of competition in local advertising markets.[8] It is striking that, of all of the competitors to local advertising in Figures 1 and 2 of the BIA Report, none is subject to a national ownership cap based on the number of consumers reached except for broadcast television. Indeed, other than broadcast television, I am not aware of a federal *per se* national ownership cap for any industry,

[3] BIA Report, p. 1.
[4] BIA Report, p. 2.
[5] Ibid.
[6] Ibid.
[7] Ibid.
[8] Ibid., pp. 3-6.

much less one based on the number of consumers reached.

Although the BIA Report offers no opinion about antitrust markets, Figure 1 of the BIA Report clearly indicates that each broadcast television station is broadly competing not just with other broadcast stations for local advertisements. Instead, each television broadcast station is potentially competing with many different means in different industries of local advertising.

Businesses in these other industries do not face national ownership caps, nor is there a concerted effort to impose a national ownership cap on these other industries. I am not aware of any plausible economic justification for maintaining the national ownership cap.

The history of the national television broadcast ownership cap indicates that the cap has been relaxed as the industry growth prospects have diminished

As shown in Table 1 below, there have been just 4 effective national cap regulations on broadcast television ownership since the advent of commercial television 70 years ago. In 1950 when the first cap was in place, commercial broadcast television was a new technology of unknown potential. The limitations on ownership were severe. By 1985, broadcast television had likely reached its peak influence, and, even so, the FCC relaxed the ownership rules to allow for coverage of up to 25% of the U.S. population with a 50% UHF discount. The effective regulatory cap with the UHF discount was 50%.

By 1996, the broadcast television industry faced substantial competition from cable, satellite, and even the Internet, and Congress relaxed the national ownership cap to 35%

while retaining a 50% UHF discount and with a periodic regulatory review by the FCC to relax that threshold. The effective statutory cap with the UHF discount was 70%.

By 2004, Congress relaxed the national cap to 39% with a 50% UHF discount. The effective statutory cap with the UHF discount was 78%.

Today, broadcast television is a pale shadow of what it was just 14 years ago when the national ownership cap was last changed. Television viewing continues to decline.[9] There is far more competition for audience and advertising. Competition to broadcasting is from some of the largest corporations in the world. These businesses are unencumbered by artificial ownership caps or by the other regulatory impediments facing the broadcast industry.

The absence of an ownership cap does not mean that competition is thwarted or that consumers are unprotected from anticompetitive behavior. As seen in Figures 1 and 2 of the BIA Report, competition in industries without national caps is alive and well. Moreover, any efforts in these industries to engage in anticompetitive behavior would be met with antitrust enforcement by two federal agencies as well as state agencies.

The national ownership caps are primarily focused on small companies that compete with much larger companies without a national ownership cap

The BIA Report focuses on how many top-ten broadcast ownership groups could merge

[9] See, e.g., "The State of Traditional TV: Updated with Q2 2017 Data," Marketing Charts, December 13, 2017, at https://www.marketingcharts.com/featured-24817.

with one another under a 50% ownership cap without a UHF discount versus current rules with a UHF discount.[10] The analysis is accurate, but it misses the larger issue: each broadcast ownership group already competes with businesses—much larger businesses--outside the broadcast industry that are much larger than any broadcast group.

In Table 2, I present the enterprise value—market capitalization plus debt—of publicly traded broadcast ownership groups. The enterprise value of the companies owning the four major networks is more than $510 billion. The enterprise value of other broadcast ownership groups is less than $30 billion. Some broadcast ownership groups are privately held, and the total enterprise value of the non-big-4 broadcast ownership groups is certainly more than $30 billion, but much less than $100 billion.

In Table 3, I present the enterprise value of the largest corporations that have a substantial presence and influence on media and advertising in the United States. Facebook is the smallest of these companies with an enterprise value of $522 billion, or more than the enterprise value of *all four* companies that own major television networks. Each one of these companies has an enterprise value that is more than 5 or even 10 times the size of the collective enterprise values of all pure broadcast ownership groups. With only a few possible exceptions, each company in Table 3 is more than 100 times the size of any pure broadcast ownership group.

To give a further sense of just how small the pure broadcast ownership groups are, in

[10] BIA Report, pp. 11-14 and Table 3.

Table 4 I present the enterprise values of selected companies in the communications sector that do not own broadcast stations but which compete directly with broadcast stations. Two of these companies, AT&T and Verizon, are larger than any companies with broadcast interests. The companies listed in Tables 3 and 4 are just a small subset of the countless firms in the communications sector that broadcast companies compete with for audience and for advertisements.

In Table 5, I present a summary of the information in Tables 2 - 4. The big 4 broadcast network companies have an average enterprise value of $129 billion. The other pure broadcast ownership groups have an average enterprise value of $4 billion. All of the companies in Table 2 face the FCC's national ownership cap regulation. All of these companies in Table 2, in turn, are much smaller than the largest companies in the communications sector, listed in Table 3. These companies have an average enterprise value that is more than 5 times the average enterprise value of broadcast network companies in Table 2, and more than 180 times the average enterprise value of publicly traded, pure broadcast ownership groups in Table 2. Yet the companies in Table 3 do not face national ownership caps. Nor do the many large corporations in Table 4.

All companies in the communications sector, whether listed in Table 2 through 4 or not, are subject to federal antitrust laws. Those laws presumably protect consumers and protect markets from anticompetitive behavior. It is difficult to review all of these tables and not wonder why the national cap rules for broadcast licenses are necessary.

The conclusions of the BIA Report related to economies of scale would more strongly support a cap higher than 50%, or no cap at all

Aside from a brief discussion about limiting mergers among the top-10 ownership groups,[11] the BIA report provides no explanation for why a 50% cap would be superior to a higher cap or no cap at all.

The last section of the BIA Report describes the result of a survey of some of the major broadcast ownership groups ranked 1-11.[12] The BIA report describes the following activities which would benefit from raising the ownership cap:

- Ability to generate In-House programming;[13]
- Greater news coverage of local and statewide issues and national news;[14]
- More choice for local, regional, and national advertisers;[15]
- Economic efficiencies in buying equipment and programming;[16]
- Economic efficiencies of central offices;[17] and
- Wider reach for other applications.[18]

I agree that economies of scale would help in each of these areas. But none of these

[11] BIA Report, pp. i – ii.
[12] See BIA Report, pp. 15-20.
[13] Ibid., p. 15.
[14] Ibid., p. 16.
[15] Ibid., p. 18.
[16] Ibid., p. 19.
[17] Ibid., p. 20.
[18] Ibid.

findings related to economies of scale is tied to a 50% national cap. Each of these economic benefits would be present with a 78% national cap, or no national cap. Indeed, the economic logic that supports economies of scale at 50%, would support more strongly a higher cap, such as 78% or 100%.

Indeed, to the extent the BIA Report persuasively argues--as I believe it does--that the national cap for broadcast stations should be raised, the relevant baseline is 78%, not 39%. The BIA Report could reasonably be interpreted to support *raising* the national cap, not *lowering* it. If anything, the BIA Report would more clearly support a 78% national cap rather than a 50% national cap.

A 50% national broadcast ownership cap without a UHF discount would be an unprecedented constriction of the national ownership cap at a time when broadcasters face more competition, and have a smaller viewership share, than ever

A proposal based on a 50% national cap without a UHF discount would not be a relaxation of current rules but rather a constriction of the rules. It would be the first time in history that the national broadcast ownership cap became smaller. And yet, as shown in Table 1, a 50% national cap without a UHF discount would be effectively lowering the cap from the 2004 level of 78% to the 1996 level of 50%. Congress in 2004 found the 50% cap with a UHF discount to be too low and raised it. Yet the broadcast industry in 2018 faces substantially more competition, and has a much smaller audience share, than it did in 2004. There is no economic foundation for lowering the national broadcast ownership cap. Indeed, the BIA Report provides a firm foundation for raising it based on economies of scale.

Table 1

The History of the FCC's National Broadcast Television Ownership Rules

Date	**Rule**	**Effective national cap** VHF only	UHF only
1950	7 television licenses, no more than 5 VHF		
1985	12 television licenses but reaching no more than 25% of US population. 50% discount for UHF stations. Two additional stations allowed If controlled by minorities or small businesses	25%	50%
1996	no limit on the number of licenses, but reaching no more than 35% of US population. 50% discount for UHF.	35%	70%
2004	no limit on the number of licenses, but reaching no more than 39% of US population. 50% discount for UHF.	39%	78%

Sources: kpmg, report prepared for FCC, "History of the Broadcast License Application Process, November 2000, at https://transition.fcc.gov/opportunity/meb_study/broadcast_lic_study_pt1.pdf

Pub. L. 108–199, div. B, title VI, §629, Jan. 23, 2004, 118 Stat. 99

Table 2

Enterprise value of publicly traded broadcast ownership groups (in billions of dollars)

Ticker	**Enterprise value**
CMCSA	217.11
DIS	182.75
FOX	85.89
CBS	30.82
total with major networks	516.57

Ticker	**Enterprise value**
NXST	7.63
SBGI	6.33
TGNA	5.27
MDP	5.1
GTN	2.46
SSP	1.69
EVC	0.45
total without major networks	28.93

Source: Yahoo Finance, accessed June 18, 2018.

Table 3

Enterprise value of largest publicly traded companies influencing media and advertising markets (in billions of dollars)

Ticker	Enterprise value
AAPL	962.07
AMZN	852.16
MSFT	725.67
GOOG	702.72
FB	522.96

Source: Yahoo Finance, accessed June 18, 2018.

Table 4

Enterprise value of selected publicly traded communications companies without broadcast stations (in billions of dollars)

Ticker	**Enterprise value**
T	318.53
VZ	316.58
NFLX	174.71
CHTR	140.95

Source: Yahoo Finance, accessed June 18, 2018.

Table 5

Summary of Tables 2 through 4

Table	**Type of company**	**Average enterprise value of company (in billions of dollars)**	**subject to national cap ownership restrictions**	**subject to federal and state antitrust laws**
2	Big 4 network	129	yes	yes
2	Other broadcast	4	yes	yes
3	Large media	753	no	yes
4	Other media	238	no	yes